

IN THE IOWA DISTRICT COURT FOR KOSSUTH COUNTY

STATE OF IOWA, ex rel., IOWA  
DEPARTMENT OF NATURAL  
RESOURCES (99AG23542),

Plaintiff,

vs.

GENERAL DEVELOPMENT, L.C., and  
KOLLASCH LAND and LIVESTOCK,  
INC., of WHITTEMORE, IOWA,

Defendants.

LAW NO. CV CV 026002

**ORIGINAL NOTICE**

**TO THE ABOVE-NAMED DEFENDANT:** Kollasch Land and Livestock Inc.

You are notified that a petition has been filed in the office of the clerk of this court naming you as the defendant in this action. A copy of the petition (and any documents filed with it) is attached to this notice. The attorney for the plaintiff is Timothy D. Benton, Assistant Attorney General, whose address is Attorney General's Office, Environmental Law Division, Lucas Building, Ground Floor, 321 E. 12<sup>th</sup> St., Room 018, Des Moines, Iowa 50319; and telephone number is (515) 281-5351, and fax number is (515) 242-6072.

You must serve a motion or answer within twenty (20) days after service of this original notice upon you and, within a reasonable time thereafter, file your motion or answer with the Clerk of Court for Kossuth County, at the county courthouse in Algona, Iowa. If you do not, judgment by default may be rendered against you for the relief demanded in the petition.

If you require assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at 641-684-6502. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2943.)

MARY ELLEN MUNN, CLERK

CLERK OF COURT, Kossuth County Courthouse  
Algona, Iowa 50511

**\*\* IMPORTANT \*\***

**YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE  
TO PROTECT YOUR INTERESTS.**

IN THE IOWA DISTRICT COURT FOR KOSSUTH COUNTY

FILED  
KOSSUTH COUNTY, IA  
DISTRICT COURT CLERK  
2010 FEB -3 PM 12:00

STATE OF IOWA, ex rel., IOWA )  
DEPARTMENT OF NATURAL )  
RESOURCES (99AG23542), )

Plaintiff, )

vs. )

GENERAL DEVELOPMENT, L.C., and )  
KOLLASCH LAND and LIVESTOCK, )  
INC., of WHITTEMORE, IOWA, )

Defendants. )

LAW NO. CV CV 026002

**PETITION AT LAW**

COMES NOW the Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (DNR), and for its claims against Defendants General Development, L.C., (General) and Kollasch Land and Livestock, Inc., of Whittemore, Iowa (Kollasch) states as follows:

**INTRODUCTION**

1. Defendant General Development, L.C. has failed to submit updated manure management plans for three (3) confinement feeding operations and failed to timely submit an updated manure management plan for one (1) confinement feeding operation it owns in Kossuth and Palo Alto Counties in Iowa. Defendant Kollasch Land and Livestock, Inc., has failed to submit updated manure management plans for two (2) confinement feeding operations and failed to timely submit updated manure management plan for two (2) other confinement feeding operations it owns in Kossuth and Palo Alto Counties in Iowa. The State of Iowa seeks civil penalties and issuance of a permanent injunction for these violations.

## **PARTIES**

2. The State of Iowa is a sovereign state of the United States of America.
3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.
4. Defendant General Development, L.C., is a limited liability company organized in the State of Iowa. Its principal office is located at 1201 North Main Street, Algona, Iowa 50511. Luke Kollasch is the registered agent for General Development, L.C. Charles Kollasch is the operating manager of the limited liability company.
5. Defendant Kollasch Land and Livestock, Inc., of Whittemore, Iowa, is an Iowa corporation with its principal office at 1201 North Main Street, P.O. Box 573, Algona, Iowa 50511. Charles Kollasch is the president and registered agent for Kollasch Land and Livestock, Inc., of Whittemore, Iowa. Luke Kollasch is the secretary and treasurer of the corporation.

## **JURISDICTION**

6. Rulemaking authority relating to the construction and operation of animal feeding operations is contained in Iowa Code sections 455B.173(13) and 459.103(1). 567 Iowa Admin. Code 65 contains rules relating to animal feeding operations.
7. The owner of an animal feeding operation, other than a small animal feeding operation, shall submit a manure management plan to the DNR if the confinement feeding operation was constructed or expanded after May 31, 1985, or the owner constructs a manure storage structure. Iowa Code §§ 459.312(1)(a)(1) and (2); 567 Iowa Admin. Code 65.16(1)(b)(1) and (2).

8. The owner of a confinement feeding operation who is required to submit a manure management plan shall submit an updated manure management plan on an annual basis to the DNR. The owner of the animal feeding operation shall also submit the updated manure management plan on an annual basis to the board of supervisors of each county where the confinement feeding operation is located and the board of supervisors of each county where manure from the confinement feeding operation is land applied. 567 Iowa Admin. Code 65.16(3)(b). An annual compliance fee of \$0.15 per animal unit at the animal feeding operation shall accompany an annual manure management plan update submitted to the DNR for approval. 567 Iowa Admin. Code 65.16(3)(c).

9. A manure management plan shall include a phosphorous index. The phosphorous index shall be used to determine application rates, based on the number of pounds of phosphorous that may be applied per acre and application practices. Iowa Code § 459.312(10)(2)(a). Manure application rates shall be determined in conjunction with the use of the Iowa Phosphorous Index as specified by the USDA Natural Resources Conservation Service (NRCS) Iowa Technical Note No. 25. 567 Iowa Admin. Code 65.17(17).

10. The DNR and the Attorney General shall enforce the provisions of chapter 459 in the same manner as provided in chapter 455B, division I, unless otherwise provided. Iowa Code § 459.103(3).

11. A person who violates subchapter III of chapter 459 shall be subject to a civil penalty which shall be established, assessed and collected in the same manner as provided in section 455B.191. Iowa Code § 459.603.

12. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard, or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(1).

13. The Attorney General shall, at the request of the director with approval of the Environmental Protection Commission (EPC), institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of chapter 455B or any rules promulgated or any provision of any permit issued under part 1 of division III of chapter 455B. Iowa Code § 455B.191(4).

## **FACTS**

### **General Development, L.C. Facilities**

14. General owns four (4) confinement feeding operations for swine in Kossuth and Palo Alto Counties. All of the confinement feeding buildings at General's facilities have below building concrete pits for manure storage. These facilities are specifically described below:

#### *Whittemore South Site*

15. General owns a hog confinement facility designated as the Whittemore South site, located in the SE 1/4 of Section 12, Fern Valley Township, Palo Alto County, Iowa. The facility is a 3,300 head finishing operation. The 2009 updated manure management plan including the Iowa Phosphorous Index was due June 1, 2009.

#### *Cylinder 4 Site*

16. General owns a hog confinement facility designated as the Cylinder 4 site, located in the NW 1/4 of Section 8, Fern Valley Township, Palo Alto County, Iowa. The facility is a 4,000 head finishing operation. The 2009 updated manure management plan including the Iowa Phosphorous Index was due June 1, 2009.

#### *Cylinder 5 Site*

17. General owns a hog confinement facility designated as the Cylinder 5 site, located in the NE 1/4 of Section 17, Emmetsburg Township, Palo Alto County, Iowa. The facility is a 4,450 head finishing operation. The 2009 updated manure management plan including the Iowa Phosphorous Index was due May 1, 2009.

#### *Whittemore North Site*

18. General owns and operates a hog confinement facility designated as the Whittemore North site, located in the SW 1/4 of Section 31, Lotts Creek Township, Kossuth County, Iowa. The facility is a 3,300 head finishing operation. The 2009 updated manure management plan including the Iowa Phosphorous Index was due May 1, 2009.

#### **Kollasch Land and Livestock Inc., of Whittemore, Iowa Facilities**

19. Kollasch owns four (4) confinement feeding operations for swine in Kossuth and Palo Alto Counties in Iowa. All of the confinement feeding buildings at the Kollasch facilities have below building concrete pits for manure storage. These facilities are specifically described below:

*Kollasch Hawkeye Woods Site*

20. Kollasch owns a hog confinement facility designated as the Hawkeye Woods site, located in the NW 1/4 of Section 5, Fern Valley Township, Palo Alto County, Iowa. The facility is a 3,600 head wean to finish operation. The 2008 updated manure management plan including the Iowa Phosphorous Index was due December 1, 2008.

*Kollasch Land O'Lakes Site*

21. Kollasch owns a hog confinement facility designated as the Kollasch Land O'Lakes site, located in the NW 1/4 of Section 23, Fairfield Township, Palo Alto County, Iowa. The facility is a 1,038 gestating sows, 192 sows and litters, 64 boars and 3,640 nursery pigs operation. The 2009 updated manure management plan including the Iowa Phosphorous Index was due April 1, 2009.

*Algona Nursery Site*

22. Kollasch owns a hog confinement facility designated as the Algona Nursery site, located in the SE 1/4 of Section 26, Cresco Township, Kossuth County, Iowa. The facility is a 6,000 head nursery pigs operation. The 2009 updated manure management plan including the Iowa Phosphorous Index was due February 1, 2009.

*Kollasch Home Site*

23. Kollasch owns a hog confinement facility designated as the Kollasch Home site, located in the SE 1/4 of Section 1, Fern Valley Township, Palo Alto County, Iowa. The facility is a 2,400 head finishing hogs and 1,200 head nursery pigs operation. The 2009 updated manure management plan including the Iowa Phosphorous Index was due March 1, 2009.

**Failure to Submit Updated Manure Management Plans - -  
General Development, L.C.**

24. On December 1, 2008, DNR officials sent a letter to General regarding the Whittemore South site, reminding General that the manure management plan for 2009 was due June 1, 2009, and that the updated plan must include the Iowa Phosphorous Index. On March 31, 2009, DNR officials forwarded another reminder to General that the updated plan with the Iowa Phosphorous Index was due June 1, 2009. On May 29, 2009, General submitted a manure management plan short form with its compliance fees, but failed to include the Iowa Phosphorous Index. On June 3, 2009, DNR officials sent a notice to General stating that its submittal was incomplete, and requiring General to submit the complete plan within ten (10) days. General did not respond. General finally submitted a complete updated plan for 2009 with the Iowa Phosphorous Index for the Whittemore South site on November 19, 2009.

25. On December 1, 2008, DNR officials sent a letter to General regarding the Cylinder 4 site, reminding General that the manure management plan for 2009 was due June 1, 2009, and that the updated plan must include the Iowa Phosphorous Index. On March 31, 2009, DNR officials forwarded another reminder to General that the updated plan with the Iowa Phosphorous Index was due June 1, 2009. On May 29, 2009, General submitted a manure management plan short form with its compliance fees, but failed to include the Iowa Phosphorous Index. On June 3, 2009, DNR officials sent a notice to General stating that its submittal was incomplete, and requiring General to submit the complete plan within ten (10) days. General did not respond. General has not submitted a complete updated plan for 2009 with the Iowa Phosphorous Index for the Cylinder 4 site.



26. On November 1, 2008, DNR officials sent a letter to General regarding the Cylinder 5 site, reminding General that the manure management plan for 2009 was due on May 1, 2009, and that the updated plan must include the Iowa Phosphorous Index. On March 9, 2009, DNR officials forwarded another reminder to General that the updated plan with the Iowa Phosphorous Index was due May 1, 2009. On April 30, 2009, General submitted a manure management plan short form with its compliance fees, but failed to include the Iowa Phosphorous Index. On May 4, 2009, DNR officials sent a notice to General stating that its submittal was incomplete, and requiring General to submit the complete plan within ten (10) days. General did not respond. General has not submitted a complete updated plan for 2009 with the Iowa Phosphorous Index for the Cylinder 5 site.

27. On November 7, 2008, DNR officials sent a letter to General regarding the Whittemore North site, reminding General that the manure management plan for 2009 was due May 1, 2009, and that the updated plan must include the Iowa Phosphorous Index. On March 16, 2009, DNR officials forwarded another reminder to General that the updated plan with the Iowa Phosphorous Index was due May 1, 2009. On April 29, 2009, General submitted a manure management plan short form with its compliance fees, but failed to include the Iowa Phosphorous Index. On May 5, 2009, DNR officials sent a notice to General stating that its submittal was incomplete, and requiring General to submit the complete plan within ten (10) days. General did not respond. General has not submitted a complete updated plan for 2009 with the Iowa Phosphorous Index for the Whittemore North site.

**Failure to Submit Updated Manure Management Plans - -  
Kollasch Land and Livestock, Inc., of Whittemore, Iowa**

28. On June 1, 2008, DNR officials sent a letter to Kollasch regarding the Kollasch Hawkeye Woods site, reminding Kollasch that the manure management plan for 2008 was due December 1, 2008, and that the updated plan must include the Iowa Phosphorous Index. On December 1, 2008, Kollasch submitted a manure management plan short form for updates with its compliance fees, but failed to include the Iowa Phosphorous Index. On December 1, 2008, DNR officials sent a notice to Kollasch stating that its submittal was incomplete, and requiring Kollasch to submit the complete plan within ten (10) days. Kollasch did not respond. On January 22, 2009, DNR officials notified Kollasch that the failure to submit the updated, complete plan would be referred for enforcement action. Kollasch finally submitted the Iowa Phosphorous Index for the facility on March 16, 2009, so that the manure management plan update for the Hawkeye Woods site was complete.

29. On October 1, 2008, DNR officials sent a notice to Kollasch regarding the Kollasch Land O'Lakes site, reminding Kollasch that the manure management plan for 2009 was due April 1, 2009, and that the updated plan must include the Iowa Phosphorous Index. On February 9, 2009, DNR officials forwarded another reminder to Kollasch that the updated manure management plan was due April 1, 2009, and that the updated plan must include the Iowa Phosphorous Index. On April 2, 2009, Kollasch submitted a manure management plan short form with its compliance fees, but failed to include the Iowa Phosphorous Index. On April 3, 2009, DNR officials sent a notice to Kollasch stating that its submittal was incomplete, and requiring Kollasch to submit the complete plan within ten (10) days.

Kollasch did not respond. Kollasch has not submitted a complete updated plan for 2009 with the Iowa Phosphorous Index for the Land O'Lakes site.

30. On August 18, 2009, DNR officials sent a letter to Kollasch regarding the Algona Nursery site, reminding Kollasch that the manure management plan for 2009 was due February 1, 2009, and that the updated plan must include the Iowa Phosphorous Index. On December 12, 2008, DNR officials forwarded another reminder to Kollasch that the updated manure management plan was due February 1, 2009, and that the updated plan must include the Iowa Phosphorous Index. DNR officials forwarded a Notice of Violation to Kollasch on February 11, 2009, when the updated plan had not been received. On February 12, 2009, Kollasch submitted a manure management plan short form with its compliance fees, but failed to include the Iowa Phosphorous Index. On February 25, 2009, DNR officials sent a notice to Kollasch stating that its submittal was incomplete, and requiring Kollasch to submit the complete plan within ten (10) days. Kollasch did not respond. Kollasch finally submitted a complete updated plan for 2009 with the Iowa Phosphorous Index for the Algona Nursery site on October 14, 2009.

31. On September 1, 2008, DNR officials sent a notice to Kollasch regarding the Kollasch Home site, reminding Kollasch that the manure management plan for 2009 was due March 1, 2009, and that the updated plan must include the Iowa Phosphorous Index. On January 8, 2009, DNR officials forwarded another reminder to Kollasch that the updated manure management plan was due March 1, 2009, and that the updated plan must include the Iowa Phosphorous Index. On February 27, 2009, Kollasch submitted a manure management plan short form with its compliance fees, but failed to

include the Iowa Phosphorous Index. On March 2, 2009, DNR officials sent a notice to Kollasch stating that its submittal was incomplete, and requiring Kollasch to submit the complete plan within ten (10) days. Kollasch did not respond. Kollasch has not submitted a complete updated plan for 2009 with the Iowa Phosphorous Index for the Home site.

#### **VIOLATIONS - - GENERAL DEVELOPMENT, L.C.**

32. General failed to timely submit a complete updated manure management plan including the Iowa Phosphorous Index for the Whittemore South site in violation of Iowa Code section 459.312(10)(2)(a) and 567 Iowa Admin. Code 65.16(3)(b).

33. General failed to timely submit a complete updated manure management plan including the Iowa Phosphorous Index for the Cylinder 4 site in violation of Iowa Code section General has failed to timely submit a complete updated manure management plan including the Iowa Phosphorous Index for the Cylinder 4 site in violation of Iowa Code section 459.312(10)(2)(a) and 567 Iowa Admin. Code 65.16(3)(b).

34. General has failed to submit a complete updated manure management plan including the Iowa Phosphorous Index for the Cylinder 5 site in violation of Iowa Code section 459.312(10)(2)(a) and 567 Iowa Admin. Code 65.16(3)(b).

35. General has failed to submit a complete updated manure management plan including the Iowa Phosphorous Index for the Whittemore North site in violation of Iowa Code section 459.312(10)(2)(a) and 567 Iowa Admin. Code 65.16(3)(b).

**VIOLATIONS -- KOLLASCH LAND AND  
LIVESTOCK, INC., OF WHITEMORE, IOWA**

36. Kollasch failed to timely submit a complete updated manure management plan including the Iowa Phosphorous Index for the Kollasch Hawkeye Woods site in violation of Iowa Code section 459.312(10)(2)(a) and 567 Iowa Admin. Code 65.16(3)(b).

37. Kollasch has failed to submit a complete updated manure management plan including the Iowa Phosphorous Index for the Kollasch Land O'Lakes site in violation of Iowa Code section 459.312(10)(2)(a) and 567 Iowa Admin. Code 65.16(3)(b).

38. Kollasch has failed to finally submit a complete updated manure management plan including the Iowa Phosphorous Index for the Algona Nursery site in violation of Iowa Code section 459.312(10)(2)(a) and 567 Iowa Admin. Code 65.16(3)(b).

39. Kollasch has failed to submit a complete updated manure management plan including the Iowa Phosphorous Index for the Kollasch Home site in violation of Iowa Code section 459.312(10)(2)(a) and 567 Iowa Admin. Code 65.16(3)(b).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

a. assess a civil penalty against Defendant General Development, L.C., pursuant to Iowa Code section 455B.191(1), for each day of violation of Iowa Code section 459.312(10)(2)(a) and 567 Iowa Admin. Code 65.16(3)(b), not to exceed Five Thousand Dollars (\$5,000.00) for each day of violation;

b. issue a permanent injunction ordering Defendant General Development, L.C., to submit an updated manure management plan including the Iowa Phosphorous Index for each facility referenced herein, and further enjoining Defendant General Development L.C., from further violation of Iowa Code section 459.312(10)(2)(a) and 567 Iowa Admin. Code 65.16(3)(b);

c. assess a civil penalty against Defendant Kollasch Land and Livestock, Inc., of Whittemore, Iowa, pursuant to Iowa Code section 455B.191(1), for each day of violation of Iowa Code section 459.312(10)(2)(a) and 567 Iowa Admin. Code 65.16(3)(b), not to exceed Five Thousand Dollars (\$5,000.00) for each day of violation; and


d. issue a permanent injunction ordering Kollasch Land and Livestock, Inc., of Whittemore, Iowa to submit an updated management including the Iowa Phosphorous Index for each facility referenced herein, and further enjoining Defendant Kollasch Land and Livestock, Inc., of Whittemore, Iowa, from further violation of Iowa Code section 459.312(10)(2)(a) and 567 Iowa Admin. Code 65.16(3)(b).

Plaintiff further requests that the Court tax the costs of this action to the defendants and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa

DAVID R. SHERIDAN  
Assistant Attorney General

  
TIMOTHY D. BENTON, AT0000843  
Assistant Attorney General

Environmental Law Division  
Lucas State Office Building  
321 E. 12<sup>th</sup> Street, Ground Floor  
Des Moines, Iowa 50319  
Phone: (515) 281-5351  
Fax: (515) 242-6072  
E-mail: [tbenton@ag.state.ia.us](mailto:tbenton@ag.state.ia.us)  
ATTORNEYS FOR PLAINTIFF